

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

JAMES SELVITELLA,

Plaintiff,

v.

CITY OF SOUTH SAN FRANCISCO, et
al.,

Defendants and
Respondents.

No. C 08-04388 CW

ORDER GRANTING
DEFENDANTS' MOTION
FOR SUMMARY
JUDGMENT ON
PLAINTIFF'S § 1983
CLAIM
(Docket No. 59)

Because the Ninth Circuit recently affirmed this Court's denial of Plaintiff's petition for a writ of mandamus under California Code of Procedure § 1094.5, the Court grants Defendants' pending motion for summary judgment on Plaintiff's remaining claim under 42 U.S.C. § 1983. Docket No. 59.

BACKGROUND

Plaintiff and Petitioner James Selvitella sought a writ of mandamus under § 1094.5, in an effort to override the decision by the Personnel Board of the City of South San Francisco to terminate his employment as Battalion Chief of the City's Fire Department. In addition to his petition for a writ of mandamus, Plaintiff alleged a claim under § 1983. Defendants and Respondents City of South San Francisco, Personnel Board of the City of South San Francisco, South San Francisco Fire Department, Barry M. Nagel, Marty Van Duyn and Phillip White opposed the

1 petition and moved for summary judgment on Plaintiff's § 1983
2 claim. The Court denied Plaintiff's petition for a writ and
3 deferred its ruling on Defendants' motion for summary judgment.

4 Accordingly, the Court instructed the clerk to enter a
5 Rule 54(b) judgment against Plaintiff on his § 1094.5 claim and,
6 after the clerk did so, Plaintiff pursued an appeal before the
7 Ninth Circuit. On March 28, 2011, the Ninth Circuit issued a
8 judgment affirming this Court's denial of Plaintiff's petition for
9 a writ of mandamus under § 1094.5, and on April 19, 2011, the
10 Ninth Circuit's judgment took effect, pursuant to Rule 41(a) of
11 the Federal Rules of Appellate Procedure. The Court now rules on
12 Defendants' motion for summary judgment to resolve Plaintiff's
13 remaining claim under § 1983.

14
15 The Court's prior order, denying Plaintiff's petition for a
16 writ, also found that his claim under § 1983 could be barred by
17 collateral estoppel given the denial of the writ petition. The
18 Court first made a threshold finding that the proceedings before
19 the Personnel Board satisfied the fairness requirements set forth
20 in Utah Construction & Mining Co., 384 U.S. 394 (1966). Order at
21 11-12. The Court then determined that two of the three
22 requirements for application of collateral estoppel under
23 California law were satisfied. Id. at 12-13. However, the Court
24 found that the third requirement--that the first proceeding ended
25 with a final judgment on the merits--was not fulfilled because its
26 decision on the § 1094.5 claim would not be a final judgment on
27
28

1 the merits until an appeal from the Court's judgment had been
2 exhausted or the time to appeal expired. Because proceeding to
3 discovery and a full jury trial on the § 1983 claim without
4 waiting for a final judgment on the § 1094.5 claim risked
5 unnecessarily wasting the parties' and the Court's resources, the
6 Court held that entry of judgment, pursuant to Federal Rule of
7 Civil Procedure 54(b), solely on the § 1094.5 claim was warranted.
8 As noted earlier, after the clerk entered judgment on the § 1094.5
9 claim, Plaintiff pursued an appeal that was ultimately
10 unsuccessful.

12 CONCLUSION

13 Given that Plaintiff exhausted his appeal and this Court's
14 judgment denying his § 1094.5 claim is now final, the third
15 requirement for application of collateral estoppel to the
16 remaining § 1983 claim has been satisfied. Accordingly, the Court
17 GRANTS summary judgment on Plaintiff's § 1983 claim in favor of
18 Defendants. Docket No. 59. The clerk shall enter judgment for
19 Defendants on Plaintiff's § 1983 claim. The parties shall bear
20 their own costs.
21

22 IT IS SO ORDERED.

23
24 Dated: 5/25/2011


CLAUDIA WILKEN
United States District Judge